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COUNSEL FOR FIRST INSURANCE FUNDING

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

In re:)
)
PAPPY'S TRUCKS LTD.,)
)
Debtor.)
FIRST INSURANCE FUNDING,)
A DIVISON OF LAKE FOREST BANK)
& TRUST COMPANY, N.A.,)
)
Movant,)
)
vs.)
)
PAPPY'S TRUCKS LTD.,)
)
Debtor/Respondent.)

**DECLARATION OF SORAYA MULERO IN SUPPORT OF
FIRST INSURANCE FUNDING'S MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AS TO PREMIUM FINANCE AGREEMENT NUNC PRO TUNC**

I, Soraya Mulero, hereby declare, pursuant to 28 U.S.C. § 1746, that the following is true to the best of my knowledge, information and belief:

1. I serve as the Assistant Vice President of Asset Management of FIRST Insurance Funding, a Division of Lake Forest Bank & Trust Company, N.A. ("FIRST"). FIRST is a division of a national bank engaged in the business of financing insurance premiums. In my capacity as Vice

President of Asset Management of FIRST, I have personal knowledge of the business operations, transactions, financial affairs, books, records, and data of FIRST and am competent to testify regarding the matters set forth herein. My duties as Vice President of Asset Management include general supervision of and responsibility for managing FIRST's assets and collateral.

2. I am authorized to submit this Declaration on behalf of FIRST, and, if called upon to testify, I could and would testify competently to the facts set forth herein based upon my personal knowledge, review of documents, or opinion. I submit this Declaration in support of *FIRST Insurance Funding's Motion for Relief from the Automatic Stay as to Premium Finance Agreement Nunc Pro Tunc* ("Motion for Relief from Stay").

3. On or about March 19, 2019, FIRST and Pappy's Trucks, Ltd. ("Pappy's Trucks") entered into a Commercial Premium Finance Agreement ("Finance Agreement"). A true and accurate copy of the Finance Agreement is attached as Exhibit A to the Motion for Relief from Stay. Pursuant to the Finance Agreement, FIRST financed \$828,819.20 of the purchase of five (5) insurance policies for, among others, Pappy's Trucks and/or Top Cat Ready Mix, LLC ("Top Cat", and collectively with Pappy's Trucks, "Debtors"), with total premiums, taxes, and fees of \$948,060.51. The five (5) insurance policies are: (i) the Property policy (No. MKLM6IM0053054) with Markel American Insurance Co., (ii) the General Liability policy (No. CF4GL01240191) with Everest Denali Insurance Company, (iii) the Auto policy (No. CF4CA01330191) with Everest Denali Insurance Company¹, (iv) the Auto Physical Damage policy (No. HSI0002239) with First Financial Insurance Co., and (v) the Excess Liability policy (No. 56000105600) with Guideone National

¹ Top Cat is a named insured on the Auto policy. A true and accurate copy of the Endorsement for the Auto policy is attached as Exhibit B to the Motion for Relief from Stay.

Insurance Co. (collectively, “**Financed Insurance**”). The Financed Insurance policies all have a twelve (12) month policy term effective March 17, 2019.

4. The Debtors caused their insurance agent to be paid a down payment of \$119,241.31 for the Financed Insurance. FIRST financed the remainder of the total premiums due for the Financed Insurance, *i.e.* FIRST paid a total of \$828,819.20 for the purchase of the Financed Insurance. Under the repayment terms of the Finance Agreement, FIRST is to be paid \$852,900.70 (which includes interest due on the amount financed) in equal monthly installments of \$85,290.07 beginning April 17, 2019 and continuing on the seventeenth day of each succeeding month over the course of ten (10) months, concluding on January 17, 2020. Subsequently, as a result of certain reductions in coverage requested by one or both of the Debtors, the monthly installment due on each of October 17, 2019, November 17, 2019, December 17, 2019 and January 17, 2020 was reduced to \$74,333.07. A true and accurate copy of the corresponding Customer Account History Report for the Finance Agreement is attached to the Motion for Relief from Stay as **Exhibit C**.

5. To fully secure the repayment obligations under the Finance Agreement, FIRST was granted and assigned a security interest in the Financed Insurance, including all return premiums, dividend payments, loss payments, unearned premiums and any other sums payable to the Debtors arising out of and related to the Financed Insurance (collectively, “**Finance Agreement Collateral**”). Additionally, under the Finance Agreement, FIRST was appointed as the attorney-in-fact with full power of substitution and full authority, in the event of default under the Finance Agreements, to: (i) cancel the Financed Insurance; (ii) receive all sums assigned to it, including the Finance Agreement Collateral; and (iii) execute and deliver certain documents relating to the Financed Insurance.

6. FIRST did not receive the required monthly payments due October 17, 2019, November 17, 2019 and December 17, 2019, and such payments remain delinquent. The last payment made under the Finance Agreement on October 23, 2019, which payment was applied to the September 17, 2019 monthly installment. One or both of the Debtors attempted to cause a payment to be made on FIRST on November 11, 2019 but it was returned for insufficient funds.

7. As of December 18, 2019, the total past due amount owed on the Finance Agreement was \$253,000.71. The total balance owed under the Finance Agreement is \$327,333.78, plus late charges, attorney fees and costs provided for by the terms of the Finance Agreement (“**Indebtedness**”).

8. Each day, FIRST’s secured Finance Agreement Collateral with respect to the Finance Agreement (*i.e.* the Financed Insurance) erodes by approximately \$2,580.38, which is the total annual refundable premium of \$941,840.00 divided by 365 days in the calendar year, representing the daily use of the Financed Insurance by the Debtors. As of the October 31, 2019 (*i.e.* Pappy’s Trucks Petition Date, if *nunc pro tunc* relief is granted), the estimated remaining Finance Agreement Collateral will be not more than \$337,062.04. As of December 20, 2019 (*i.e.* the date of filing of the Motion for Relief from Stay), the estimated remaining Finance Agreement Collateral will be not more than \$214,046.70, which is less than the balance due under the Financing Agreement, thereby rendering FIRST undersecured as of that date by at least \$113,287.08. Thereafter, FIRST’s collateral position will continue to further deteriorate until the Financed Insurance expires on March 17, 2020. A true and accurate copy of the Finance Agreement Collateral calculation for the Finance Agreement is attached as Appendix 1 hereto. Upon receiving and applying the Finance Agreement

Collateral to the Indebtedness, any excess funds will be returned to the Debtors for the benefit of the estates.

9. FIRST bears additional risks with respect to the Finance Agreement Collateral, such as that the insurers will issue unearned premiums on a 90% pro rata or other short-rate basis, refuse to backdate the cancellation due to policy provisions, conclude that policies are deemed to be fully earned, and/or conduct audits which may reduce the amount of unearned premiums returned to FIRST. As a result, the amount of unearned premiums returned to FIRST may be less than the amounts calculated in the previous paragraph.

Executed on December 20, 2019
Northbrook, IL

/s/ 
Soraya Mulero

APPENDIX 1

Policy #	Policy Amount	Effective Date	Cancel Date	Pro-Rate Return
1	\$ 30,272.00	3/17/19	10/31/19	\$ 11,362.37
2	\$ 60,750.00	3/17/19	10/31/19	\$ 22,802.05
3	\$ 536,990.00	3/17/19	10/31/19	\$ 201,555.15
4	\$ 155,000.00	3/17/19	10/31/19	\$ 58,178.08
5	\$ 115,000.00	3/17/19	10/31/19	\$ 43,164.38
TOTAL	\$ 898,012.00			\$ 337,062.04

1	\$ 30,272.00	3/17/19	12/20/19	\$ 7,215.52
2	\$ 60,750.00	3/17/19	12/20/19	\$ 14,480.14
3	\$ 536,990.00	3/17/19	12/20/19	\$ 127,994.88
4	\$ 155,000.00	3/17/19	12/20/19	\$ 36,945.21
5	\$ 115,000.00	3/17/19	12/20/19	\$ 27,410.96
TOTAL	\$ 898,012.00			\$ 214,046.70